

Minutes of the Board of Adjustment meeting held on Monday, July 9, 2012, at 5:30 p.m. in the Murray City Municipal Council Chambers, 5025 South State Street, Murray, Utah.

Present: Travis Nay, Vice-Chair  
Rosi Haidenthaller  
Preston Olsen  
Tom Halliday  
Chad Wilkinson, Community Development Manager  
Joshua Beach, Assistant Planner  
Tim Tingey, Administrative & Development Services Director  
G.L. Critchfield, Deputy City Attorney  
Citizens

Excused: Roger Ishino, Chair

The Staff Review meeting was held from 5:15 to 5:30 p.m. The Board of Adjustment members briefly reviewed the applications. An audio recording is available for review in the Community & Economic Development office.

Travis Nay explained that variance requests are reviewed on their own merit and must be based on some type of hardship or unusual circumstance for the property and is based on state outlined criteria, and that financial issues are not considered a hardship.

#### APPROVAL OF MINUTES

Tom Halliday made a motion to approve the minutes from June 11, 2012 as written. Rosi Haidenthaller seconded the motion.

A voice vote was made. The motion passed, 4-0.

#### CONFLICT OF INTEREST

There were no conflicts of interest for this agenda.

#### CASE #1453 – CHARLES & DONNA FAUX – 1395 East Greenfield Avenue – Project #12-80

Charles & Donna Faux and Quinton Condie were the applicants present to represent this request. Joshua Beach reviewed the location and request for a side yard and total side yard setback variances at the property addressed 1395 East Greenfield Avenue. Murray City Code Section 17.100.080 states; Residential building lots in the R-1-8 zone shall have an eight foot minimum side yard, and the two combined side yards shall total 20 feet. The applicants are requesting a one foot variance for a seven foot side yard setback on one side of the dwelling. The other side yard has an 11 foot setback at the closest point for a combined total 18 foot side yards. The property angles from front to back and narrows to the back area of the property. The zoning regulation requires a minimum eight foot setback on one side yard, and a combined minimum total side yards of 20 feet. The house was built in 1959 and was previously located in Salt Lake County. At the time the house was built, Salt Lake County generally required an 8 ft. minimum side yard and a minimum total combined side yards of 16 ft. Based on review and analysis of the application material, subject site and surrounding area, and applicable Murray Municipal Code sections, the Community and Economic Development Staff finds that the proposal meets the standards for a variance. Therefore, staff recommends approval.

Ms. Haidenthaller asked for clarification regarding the shaded area on the site plan representing the structure the applicant is proposing. Mr. Beach responded in the affirmative.

Mr. Halliday asked if the variance is shown by the small portion in the back on the left hand side of the site plan. Mr. Beach responded in the affirmative.

Quinn Condie, 1420 East Lombardy Circle, stated he is a neighbor to Charles and Donna Faux. Mr. Condie stated that the applicants would like to add a two car garage to park their two vehicles.

Ms. Haidenthaller asked the setback of the home is to the property line. Mr. Condie stated that from the applicants fence to the neighbor's garage is approximately 13-14 ft.

The discussion was then opened up to public comment. No comment was made and the public comment section was closed.

Ms. Haidenthaller made a motion to approve variance as requested based on the findings of fact, review and analysis of the application material, subject site and surrounding area, and applicable Murray Municipal Code sections. Mr. Olsen seconded the motion.

Vote recorded by Mr. Wilkinson.

A \_\_\_\_\_ Mr. Halliday

A \_\_\_\_\_ Mr. Olsen

A \_\_\_\_\_ Ms. Haidenthaller

A \_\_\_\_\_ Mr. Nay

Motion passed, 4-0.

Ms. Haidenthaller made the motion to approve the Findings of Fact as written by Staff. Mr. Halliday seconded the motion.

A voice vote was made. Motion passed, 4-0.

CASE #1454 - THOMAS & SIDNEY YOUNG - 4554 South Cottage Grove Lane –  
Project #12-82

Thomas and Sidney Young were the applicants present to represent this request. Joshua Beach reviewed the location and request for a rear yard setback variance to allow for an existing attached deck at the property addressed 4554 S. Cottage Grove Lane. The Cottage Grove Condominiums are a Planned Unit Development. Murray City Code section 17.60 relates to Planned Unit Developments (PUD). The minimum rear yard setback for this particular Planned Unit Development is ten feet. The applicant proposes a setback of three feet from the rear property line. The applicant had the attached deck built in June 2012. The applicant has not provided any evidence of a building permit for the attached deck. The need for the variance arises from a desire to build a larger deck than is permitted per the setbacks required in the Planned Unit

Development. The deck that existed prior to the construction of the current deck met the requirements of the setbacks with a width of four feet. The applicant is proposing a deck that is eleven feet by twenty feet. In the variance request the applicant is asking that the setback be changed from ten feet to three feet. The deck would extend seven feet further into the rear yard than is allowed per the Planned Unit Development, and the deck would then be three feet from the rear property line. A public notice was sent to adjacent property owners on June 21, 2012. As of the date of this report, the City had received no phone calls. Based on review and analysis of the application material, subject site and surrounding area, and applicable Murray Municipal Code sections, Community and Economic Development Staff finds that the proposal does not meet the standards for a variance. Therefore, staff recommends denial.

Ms. Haidenthaller noted that other properties in the condo community have previously put up larger decks on the back of their units. She asked if there is any record of any previous variances for those decks. Mr. Beach responded that there is not record of variances for the exiting decks.

Mr. Halliday asked what the building permit indicated when it was filed for the applicants deck. Mr. Beach responded that the applicant did not apply for, or obtain a building permit for this deck. If they had, the planning department would have looked at it and told them the parameters and setbacks that needed to be in place.

Mr. Halliday asked if the original deck and stairway that were built were in accordance with the setbacks and building codes. Mr. Beach noted that the stairway and landing can be inside the setback, just not the deck itself.

Ms. Haidenthaller asked the existing setback of the condo to the property line and the deck to the property line. Mr. Beach responded that there is a 3 foot setback between the property line and the deck, and it is 14 feet from the property line to the condo.

Ms. Haidenthaller pointed out that to remain within code; the deck cannot protrude into the setback more than 4 feet. Mr. Beach responded in the affirmative.

Ms. Haidenthaller asked if the condo could have an additional landing and stairway. Mr. Beach stated that they could go back to having it the way it was originally, but for anything else they would need to obtain a variance.

Thomas Young, 4554 Cottage Grove Lane, stated he and his wife purchased the condo as their retirement home. He stated that prior to purchasing the condo they asked the president of the condo association if they would be able to put a new deck on the rear of the condo. The president told them they could, they then submitted plans and blueprints to the HOA prior to beginning any construction. Mr. Young stated that because he has COPD (chronic obstructive pulmonary disease) they wanted to have a deck that does not have stairs that go down. He stated that currently he is on oxygen, but does use an inhaler when he has to go up and down stairs and anticipates that as time goes on, he will not be able to use stairs at all. He stated that he feels they are being deprived of privileges being granted to other residents.

Sidney Young, 4554 Cottage Grove Lane, stated she thought that by going through the condo association they were going through the proper channels. Mr. Young stated that

all the condos have concrete extending 3 feet from where the staircase off the deck ends. Ms. Young asked if some sort of compromise could be considered and they would be willing to compromise. Ms. Young stated that with the original deck, there is not enough room to put out a table or a grill to barbeque.

Mr. Holliday asked the applicants if they are renting or if they own the condo simply because he can see that the property owner's address is different than the address of the subject condo. Ms. Young stated that the variance application paperwork was submitted prior to them moving into the condo.

The discussion was then opened up to public comment.

George Welch, 4571 Cottage Creek Lane, stated that he represents the homeowners association for the Cottage Grove Condominiums. Mr. Welch stated that the condos are approximately 15 years old and the decks that were originally put in the rear of each condo were constructed of extremely cheap material and are not very functional and rickety. He stated that over the past 15 years homeowners have built decks on the backside of their units. He confirmed that the Young's did approach the HOA on building a larger deck and he did confirm that the HOA told them that it would be okay to do so. He feels that both the Young's and the HOA acted in good faith considering previous HOA approvals of the construction of decks by other residents.

Ms. Haidenthaller asked Mr. Welch how long he has been on the HOA board. Mr. Welch stated that it is his third year. Ms. Haidenthaller asked him if in the past the HOA has sought information about what the setback requirements are, or if building permits were required to change the decks. Mr. Welch stated that through the years there have been different people on the HOA board and the condominium complex does not have a property management company, so he is not sure if that information has been previously obtained.

Ms. Haidenthaller asked Mr. Welch if he thinks everyone just assumed that what they were doing was okay, because someone had done it in the past rather than taking the time to find out what the city codes were that governed something like that. Mr. Welch agreed with that.

Ms. Haidenthaller stated that in order to approve a variance, the Board of Adjustments needs to find a hardship and/or a viable legal reason. She stated that just because the HOA granted approval and assumed that it is a legal use, doesn't make it any easier for the Board of Adjustments to ignore city codes and approve a variance. Mr. Welch stated that if the applicant is unable to build their deck similar to the decks other homeowners have built, the other homeowners will now need to take down their decks. Mr. Welch stated that since the HOA acted inappropriately, they are the ones that should be to blame, not the homeowners.

Jim Witkens, 244 East Cottage Glen Lane, stated he is a resident at the Cottage Grove Condominiums. Mr. Witkens stated the original decks that were built are useless; consequently owners have put on different decks. He stated that when he bought his unit, there was an existing deck with an awning that was built by the previous owner and when the wind blew, it felt as though it was going to tear the whole condo down, so he took it down and built a 3" insulated roof over the deck. The back of their deck is 4 feet

from the property line. Mr. Witkens asked how many people were at the meeting from the condo community. Mr. Nay stated for the record, 11 people raised their hands. Mr. Witkens is in favor of approving the variance request.

Lynn Martin, 1031 East 3740 South, stated she is the real estate agent that sold the Young's their condo. She stated the deck was one of the most important aspects of the home and that is why they approached the HOA before they bought the condo. Ms. Martin asked if they don't get the variance approved, could they meet in the middle and get at least somewhat of a larger deck so that they can put a table, chairs and barbeque on it. Ms. Martin stated that she feels badly because the Young's would not have bought the condo if they knew they were unable to build the deck off the back. Ms. Martin asked if this variance is not approved, that at least an agreement can be made to build some sort structure for them to enjoy their back yard.

Mr. Welch stated that his biggest concern is the added expense it would entail to modify the deck. Mr. Nay made note that according to state law, one of the things the Board of Adjustments is unable to consider is an economic hardship to the applicant. Mr. Nay then asked if anyone from the public was opposed to the variance request. For the record no one raised their hand.

The public comment section was closed.

Ms. Haidenthaller asked about the possibility for the HOA to go back and change the setback bylaws and the process to do that.

Mr. Beach stated that the city's stance on zoning enforcement is not to actively pursue or look around the city to enforce code. Enforcement is based primarily through applicant initiation or from a citizen calling in a complaint. Therefore that may be why some of the other decks in the complex have not been brought before the board, simply because no one has complained about them. PUD's (Planned Unit Development's) allow for flexibility in lot size and setbacks. However, the reason there is a 10 foot setback in the rear of this development is because there is a public utility easement. Typically no one is able to build upon a public utility easement unless they get an encroachment.

Ms. Haidenthaller asked if the easement is on every side of the complex. Mr. Beach responded that the easement is on the west side in development and this specific unit backs up to that easement; so from the 4 foot mark measuring out from the building to the property line is the 10 foot easement.

Mr. Welch stated that to his knowledge there are no utilities that run through there. Mr. Beach stated that whether or not there are utilities in place, there is an easement. An applicant can apply for abandonment of the easement if it is not being used. Ms. Haidenthaller asked what the process would be for the HOA to do that. Mr. Beach stated that the Engineering Department would need to sign off on the abandonment. Mr. Wilkinson stated that it is a discretionary process for amending a PUD through the planning commission. Just applying doesn't mean that there would be an approval as it would need to go through the Planning Commission. PUD's are exceptions in and of themselves. The setback for this zone would otherwise be much larger than the current 10 feet for this particular development. Therefore an exception has already been approved for the PUD. Any modifications would need to go back to the Planning

Commission for approval. He stated there should be consideration of whether that utility easement will be necessary for the area before amending a utility easement on a plat.

Mr. Welch commented that the option of amending the plat does not sound very promising. Ms. Haidenthaller noted that the Board of Adjustments is unable to make that decision. The reason she wanted to bring this up is so that if the variance request is denied, the applicant will understand what the process would be to try and get it changed.

Ms. Martin stated that a cement patio was poured at the time the complex was built. She asked what the difference between a concrete patio extending out that far verses a deck extending that far. Mr. Wilkinson responded that the difference is approximately 8 feet and that a flat concrete pad verses a tall deck is an encroachment onto an easement and it puts the deck that much closer to the neighbor's property. Some of the purposes of having setbacks are for fire code/compliance and privacy. Whenever something is put close to a property line it decreases both fire distance and privacy to the adjoining property owner. The city did not single out this particular applicant, this particular case was complaint driven and was an inquiry about whether a building permit had been obtained for the deck.

Mr. Halliday asked if it is permissible to have a concrete slab over an easement, just not a physical structure. Mr. Wilkinson stated that usually a concrete pad is permissible over an easement.

The public comment portion of the meeting was re-opened.

Ms. Martin made note that the neighbors won't see anything different than they already see and when the rail is installed on the new deck, it will allow for more privacy. Mr. Nay reminded Ms. Martin that part of the issue is that no plans have been submitted to the city, so no one knows what that will look like.

Mr. Martin asked if all setbacks in this complex are 10 feet. Ms. Haidenthaller indicated that 14 feet is what they have, 10 ft. of which is the setback requirement and utility easement, so the first 4 feet off of the condo allows for a deck that would be in compliance, beyond the 4 feet is an encroachment into the utility easement.

Jane Myers, 5317 Wheatridge Lane, stated she is a friend of the Young's. She asked if the Young's could leave 4 feet of the deck and drop the rest to the ground level. She questioned how utility trucks are to gain access to units with only a 10 foot access. Ms. Haidenthaller explained that the utilities easement isn't just for access, but is used to bury lines for future utilities. Ms. Myers asked if the request for a variance is denied, will the Board of Adjustments provide the Young's some guidance. Ms. Haidenthaller reminded Ms. Meyers that a 4 foot deck is in compliance and they could proceed with plans for construction of a new 4 foot deck. If there are any changes at that time, they would need to be addressed by staff (i.e. taking out concrete pad or the use of Trek decking).

The public comment section was closed.

Mr. Olsen stated that the difficulty with this variance request is there are a lot of

sympathetic reasons for leaving the newly constructed deck up. However, there must be a unique hardship or a legal reason for granting this variance. Ms. Haidenthaller made note that having lack of knowledge on the code for this project is not a reason to grant the variance either. Mr. Olsen stated that people have a right to see that the zoning code is enforced and if it is not, they have a right to file a complaint and have the city address the issue. Mr. Halliday stated that he feels compassion for the owners based on the fact that many of his neighbors in the complex already have decks that are not in compliance. He questioned why the contractor building the deck did not obtain a building permit.

The public comment portion of the meeting was re-opened.

Josh Martin, 2050 Ribbon Lane, is the contractor for the applicant. He stated that he was under the impression that the Young's had already gone through the requirements in order for him to build the deck. He was unaware that he needed a permit from the city to do the work, because as far as he knew it had been approved by the HOA.

Mr. Halliday asked staff what size a structure needs to be in order to file for a permit. Mr. Wilkinson stated that typically decks are subject to the building code, but since this particular deck is attached to the main structure, it does require a permit and is subject to setback requirements.

The public comment section was closed.

Mr. Nay stated that a 10 foot setback is in place for several reasons; one reason being the privacy of the abutting neighbors and a 3 foot setback does encroach on privacy. Mr. Olsen stated that the Board should not be making a compromise, but instead, it should come from the City.

Ms. Haidenthaller made a motion to deny the request for a rear yard setback variance based on the findings of fact. Mr. Olsen seconded the motion.

Vote recorded by Mr. Wilkinson.

A \_\_\_\_\_ Mr. Halliday

A \_\_\_\_\_ Mr. Olsen

A \_\_\_\_\_ Ms. Haidenthaller

A \_\_\_\_\_ Mr. Nay

Motion passed, 4-0.

Mr. Olsen made the motion to approve the Findings of Fact as written by Staff. Mr. Halliday seconded the motion.

A voice vote was made. Motion passed, 4-0.

CASE #1455 – PAUL & KATHY BARNETT – 5105 South Wesley Road – Project #12-84

Paul and Kathy Barnett were the applicants present to represent this request. Chad Wilkinson reviewed the location and request for a front and side yard setback at the

property addressed 5105 South Wesley Road. Murray City Code Section 17.100.080 states residential building lots in the R-1-8 zone shall meet a minimum side yard of eight feet and the two required side yards shall total 20 feet. The minimum depth of the front yard shall be 25 feet. The applicants are proposing to construct additions onto the front and rear of the existing dwelling and adjust the carport roof and supporting posts from diagonal to vertical. The applicants are requesting a 2 foot 5 inch front yard setback variance, a 5 foot side yard variance and total side yards variance of 8.67 feet. The zoning regulations requires a minimum front yard setback of 25 feet, a minimum side yard setback of 8 feet and total combined side yards of 20 feet. The records show the house was built in 1962 and in 1963 there were property boundary adjustments that were recorded at Salt Lake County Recorder's Office which changed the setbacks to the south property boundary. The current property owners purchased the property with the changed boundary lines. Based on review and analysis of the application material, subject site and surrounding area, and applicable Murray Municipal Code sections, the Community and Economic Development Staff finds that the side yards setback request meets the standards for a variance. Therefore, staff recommends approval. Based on review and analysis of the application material, subject site and surrounding area, and applicable Murray Municipal Code sections, the Community and Economic Development Staff finds that the front yard setback variance request does not meet the standards for a variance. Therefore, staff recommends denial.

Mr. Nay asked how much the front yard setback would encroach. Mr. Wilkinson responded that the proposed setback would be 22 feet 7 inches, which is 2 foot 5 inch variance.

Mr. Holliday asked what the dimension of the overhang on the porch in front of the windows is. Mr. Wilkinson showed the board a picture of the front of the house from the applicants file. The picture did not have a measurement of the overhang. However, Mr. Wilkinson stated that the setbacks are measured from the vertical support not to an overhang.

Ms. Haidenthaller stated that the addition appears to be 6 feet 11 inches. She commented that if the applicant had chosen to make the addition 5 feet they would have been in compliance. Mr. Wilkinson stated that they had the option to extend up to 8+ feet before they are required to have a variance.

Kathy Barnet, 5105 South Wesley Road, stated that when they moved into the house they were unaware of the side yard setback, because it doesn't show up on a lot of plat maps. The reason for revising the carport supports from diagonal to vertical is because they have sunken below ground and the pillars are rotten on the base. Their house was the first house built in the subdivision with the carport. The house next to them was the last built in the subdivision and when they were building they determined they needed more property for that lot, therefore; they were given a small strip of their lot. She stated that she spoke with Curtis Woodward at Salt Lake County and she was informed that they could not find any setbacks for property lines on their property during the time their house was built. She stated they are asking for a variance to make their house structurally sound without encroaching onto their neighbor. She stated that regarding the front setback variance, she feels that a hardship is created because there is less space to add onto the south end of the home than the north end. They would like the setback to reflect the distance from the furthest point on the north end rather than the



south end because of the curvature of the property as seen on the submitted drawing, leaving 36 feet 5 inches between the street and the front of the house. The curvature of the property reduced their property by approximately 7 feet giving them a limited ability to do anything with their yard. She stated that due to the re-deeding, they lost part of their lot. She stated that by approving both variances they would be able to add to the property value and invest in the neighborhood. Ms. Barnett stated that due to the curvature of the property this remodeling does not affect the general plan, is not contrary to the public interest and is in keeping with the spirit of the land use and that a hardship does exist contrary to what staff has mentioned.

Mr. Holliday stated that the applicant's house is sitting at an angle on the property. He commented that since the house is sitting square to the property line, the curvature in the road cuts across the front of their lot. Ms. Barnett stated that if the house were perpendicular with the addition, it would be in compliance, but because of the curvature in the property almost half the house is short in compliance.

The discussion was then opened up to public comment. No comment was made and the public comment section was closed.

Mr. Halliday stated that he can see where land shape can be an issue. In his opinion, the county made some changes after the house was built. He doesn't see where the two feet would really change the dynamics or encroach on anything. Mr. Olsen agreed that there are some hardships due to the shape of the lot. He feels that the argument was well presented that the shape of the street is causing an issue with the expansion of 2 feet. Mr. Nay asked if it would make a dramatic difference on the finished re-model if the variance was not granted. Mr. Olsen made mention that he doesn't feel that it is the Board of Adjustments mission to look at applicants plans and determine whether or not those plans are right, it's whether or not they have a good reason for a variance. Mr. Halliday concurred.

Mr. Wilkinson added that if the board decided to approve the front setback variance, the board will need to come up with some findings for the record.

Mr. Olsen made a motion to approve a variance request for a side yard setback based on the review, analysis and findings in the staff report.

Ms. Haidenthaller seconded the motion.

Vote recorded by Mr. Wilkinson.

A \_\_\_\_\_ Mr. Halliday

A \_\_\_\_\_ Mr. Olsen

A \_\_\_\_\_ Ms. Haidenthaller

A \_\_\_\_\_ Mr. Nay

Motion passed, 4-0.

The board then went into discussion regarding the second variance request.

Mr. Nay asked that the board address item "B" in the Findings of Fact. Both Mr. Nay and Mr. Halliday stated the curvature of the road and the unique shape of the lot. Mr. Halliday stated that the curvature directly affects item "A" in the Findings of Fact. In addressing item "C" Mr. Halliday stated that without actually taking a tape measure out to the site he feels that other residents could potentially have the same problem. Mr. Nay made note there are no other variances in the area for this particular issue. Mr. Olsen stated that the unique issues are orientation of the house to the road, the change that was made in the lot line combined with the curvature of the road. Mr. Nay continued that all of the homes in that area may be unique unto themselves due to the curvature in the road. Mr. Wilkinson reviewed what the board members were saying; that granting a variance would be necessary in order for the applicant to build a reasonable expansion of their home. The board member's agreed that was correct. Mr. Wilkinson then said that they could use that as the finding for item "C". Mr. Halliday addressed item "D" by stating that he does not see how this is going to affect the neighbors or the community and will allow the applicant to use their land to its fullest potential. Mr. Halliday stated that with regards to item "E" that justice will be done in allowing the applicant to do this due to the hardship of the shape of the land.

Mr. Halliday made a motion to approve a variance request for a front yard setback based on the Board of Adjustment's new Findings of Fact as stated above. He stated that all proper building permits and codes must be obtained and met. Mr. Olsen seconded the motion.

Vote recorded by Mr. Wilkinson.

A \_\_\_\_\_ Mr. Halliday  
A \_\_\_\_\_ Mr. Olsen  
N \_\_\_\_\_ Ms. Haidenthaller  
A \_\_\_\_\_ Mr. Nay

Motion passed, 3-1.

Ms. Haidenthaller made note that her "nay" vote was because she doesn't feel that an applicant should be granted the variance just because they want a 12 foot room when the code is 11 feet and that others have been made to change their plans in order to meet code.

Mr. Olsen made the motion to approve the Findings of Fact as they have been modified by the board and authorize the Chair to review such findings and sign off on them. Mr. Halliday seconded the motion.

A voice vote was made. Motion passed, 4-0.

CASE #1456 - SHAWN BRADLEY – 5788 South Oxford Hollow Court – Project #12-85

Shawn Bradley was the applicant present to represent this request. Chad Wilkinson reviewed the location and variance request to allow for an accessory structure (Game Court) within the front yard and a front setback variance for an accessory structure. Mr. Wilkinson explained that the property addressed 5788 S. Oxford Hollow Court (part of a new subdivision known as Oxford Creek). Murray City Code Section 17.100.080 requires

a 25 foot setback in the R-1-8 zoning district. Section 17.08.020 defines "Game Court" and specifies that for purposes of determining where the game court may be located on a residential lot, a game court is considered an accessory structure. Section 17.100.090 (K) prohibits accessory structures in the front yard within an R-1-8 zoning district. Section 17.92.090 (K) prohibits accessory structures in the front yard in an A-1 zoning district. On June 19, 2012 City staff received an anonymous complaint regarding construction of a large concrete slab on Lot 101 of the recently platted Oxford Creek Subdivision. Upon investigation by staff, it was determined that the purpose of the slab was to provide a game court for the applicant. The applicant owns the property directly to the west of lot 101. The slab measures 50' 6" X 100' 6" or approximately 5,075 square feet. Lot 101 is approximately 10,000 square feet in size. The court is 20 feet from the front property line on the north east side of the lot and 22 feet from the south east corner of the lot. The zoning ordinance allows for game courts as an accessory use in the R-1-8 zoning district. However, in order for an accessory use to be established on a property, a principal use must be established. An accessory use cannot be established on a lot without the establishment of an allowed principal use on the property. In order to legally establish the accessory use, the applicant would need to combine Lot 101 with his property to the west in order to place the accessory use on a lot with an established principal use. In addition, the zoning would need to be changed on one of the two properties to prevent split zoning. Even with combination of the properties, the game court would not meet the standards for an accessory structure. Accessory structures are prohibited in the front yard of both R-1-8 and A-1 zoned properties. The front yard is defined in section 17.08.020 as follows:

"Front yard" means a space in the same lot with a building, between the front line of the building and the front lot line, and extending across the full width of the lot. The "depth" of the front yard is the minimum distance between the front lot line and the closest point of the building. A building is further defined as, "Any structure having a roof supported by columns or walls used or intended to be used for the shelter or enclosure of persons, animals or property."

Should the lots be combined, the game court would be located in the applicant's front yard as defined by the zoning ordinance. In this case, the front yard would run from the new Oxford Hollow Court to the front of the residence. Therefore, the applicant has applied for a variance to allow the game court/accessory structure in the front yard and a variance to the minimum 25-foot front yard setback for structures. Should a variance be approved, the applicant would still be required to combine the lots as the issue of an accessory structure located on a separate lot is a land use issue and the board of adjustments may not grant use variances.

Mr. Wilkinson stated that in a letter Mr. Bradley submitted, he has indicated a willingness to cut back the concrete to a 25 foot front yard setback to meet the standard. Therefore, that issue doesn't necessarily need to be a part of the motion. Mr. Wilkinson also stated that in 1998 there was some concern about game courts, so the City Council decided to adopt a definition of game courts that they be included as an accessory structure. Therefore, a game court is subject to all the requirements of an accessory structure. One of those requirements being; accessory structures are not allowed in the front yard. Staff's decision on this issue is based on the policy decision that was adopted by the City Council. Mr. Wilkinson also stated that there are references in the code to building in a flood plain and there are some issues with this property and building within a flood

plain. However, there are also some allowances for flatwork within a flood plain. Note: The responses to the State variance criteria below assume that the lots will be consolidated. Staff has suggested that the applicant apply for a variance prior to application to combine the lots. If the variance is approved by the Board, the applicant will still be required to combine the lots and apply for a zone change for the property. Based on review and analysis of the application material, subject site and surrounding area, and applicable Murray Municipal Code sections, the Community and Economic Development Staff finds that the front yard setback variance does not meet the standards for a variance. Therefore, staff recommends denial. Based on review and analysis of the application material, subject site and surrounding area, and applicable Murray Municipal Code sections, the Community and Economic Development Staff finds that the request for a variance allowing an accessory structure within the required front yard does not meet the standards for a variance. Therefore, staff recommends denial.

Mr. Halliday asked Mr. Wilkinson what the advantage would be in joining the two lots. Mr. Wilkinson stated that it would be required because it is not permitted to have a game court on a lot by itself as it must be an accessory use to a principal use. If the game court were on a lot by itself, it would be a use issue not a variance issue and the State Code prohibits any use variance. He explained that staff has reviewed this issue, if the variance(s) are approved, there would need to be a requirement that two lots be combined.

Mr. Nay commented that in his neighborhood they have a lot that is designated as a park for the neighborhood. He asked if something similar could be done in a situation like this.

Mr. Wilkinson stated that parks are allowed uses, but that would need to go through a development process which would consist of obtaining a Conditional Use Permit for a public game court.

Ms. Haidenthaler asked the reason behind not allowing a game court in the front yard and that Mr. Bradley has a large size lot, it seems that there is an advantage to making it seem like it isn't in the front yard. Mr. Wilkinson responded that he was unsure why in 1998 the City Council specifically adopted the policy that game courts be included as an accessory structure.

Mr. Olsen asked about the definition of a game court. Mr. Wilkinson responded by defining a game court as written in the City Code. "A game court is a multi-use recreational use facility which may be of varying size, with or without lighting, having an artificial surface and is adaptable to a multi-sport function such as; basketball, short court tennis, volleyball, hockey, soccer, roller street hockey, paddle tennis, badminton, shuffle board, racquet games, tot wheeling, play area and other related or similar sport and recreational activities. For the purposes of determining where a game court can be legally located on a residential lot, a game court shall be considered an accessory structure."

Mr. Halliday made note that a concrete slab is legal, but as soon as you put a basketball hoop up, it is not. Mr. Wilkinson told him that no, it would not be legal as there must be access to a garage or some other structure. A front yard is required to be landscaped except for those areas that are driveways to a garage or carport.

Ms. Haidenthaller made note that the coverage to one lot would be over 35% which is not allowed, but if the two lots were combined, it would not be a problem.

Shawn Bradley, 606 East Sunny Flowers Lane, stated that he and his wife bought this property because of the uniqueness. They had concerns about being in a flood zone, so when the final plans were drawn up, they ended up positioning the front of the house to the west and the barn and swimming pool outside the flood zone. The updated version of the flood zone map is incorrect. The creek was diverted several years ago and the flood zone still makes a horseshoe curve. They had looked at other lots similar in uniqueness and to date one of those properties has three auxiliary structures in its front yard. He and his wife were aware that at some point there would be a subdivision built next to his property and the yard in front of their house would be abutting someone's back yard. Ivory Development approached Mr. Bradley when they purchased the subdivision property and at that time Mr. Bradley purchased a buffer between his property and the proposed subdivision. In so doing he was able to purchase one of the building lots with the understanding that they approved him of putting in a sport court on that property if he was able to landscape according to code. Mr. Bradley pointed out that the front yard setback variance that has been requested is actually a mistake on Mr. Bradley's part. He admitted to measuring from the curb and gutter when it should have been from the back side of the future sidewalk. Mr. Bradley does not have a problem with fixing the difference due to the incorrect measurement. Therefore, he is withdrawing the front setback variance request. Mr. Bradley pointed out the difference between the flood zone and the flood plain on his property. Mr. Bradley stated that the plan is for them to build a 10 foot fence around the sport court and to surround it with mature evergreen trees along the front of the new road that is to be built in Oxford Creek subdivision. Mr. Bradley pointed out a property near his that is very similar to his and that as you approach the property there is an auxiliary structure that is detached from the house, and on the left hand side of the drive in the front of the house is a sport court and detached garage. The front of that house borders the back of 7-8 lots in the R-1-8 zone. His request is for a variance for a game court to be in that particular part of his property with the understanding that if the variance is granted there would be a requirement to combine Lot 101 of the Oxford Creek subdivision which is currently zoned R-1-8 with the lot where his home is located, which is in the A-1 zoning district.

Ms. Haidenthaller asked Mr. Bradley if there will be lighting for the game court. Mr. Bradley stated that he has not determined that at this point, but he is open for a discussion on that. He stated that the courts are designed for lighting, but he was under the impression that a decision for lighting had not been made as of yet.

Ms. Haidenthaller asked if other structures will be built on the lot or just the game court and the landscaping. Mr. Bradley responded that there will not be any other structures built on the lot. He stated there will be a 6 foot perimeter fence built to code separating lot 101 & 102.

Ms. Haidenthaller noted that if Mr. Bradley decides to install lighting on the sport court, he is likely to have problems from neighbors if the lights are not strategically placed. Mr. Bradley stated that he has spoken to his current neighbors in regards to this project and has had no resistance. He stated that he realizes that Ivory Homes will be selling

lots/homes to new neighbors, but feels that through the discussions he has had with them, it will not be a problem.

Mr. Nay asked Mr. Bradley if he is going to make the game court available to anyone else in the neighborhood. Mr. Bradley stated that this will be a private game court, but yes he guesses that other kids from the neighborhood will come over and play on the game court just as some of his children's friends already come over to swim in the pool, jump on the trampoline and so on. Mr. Bradley showed the Board member's the property in his neighborhood that is similar to his. Mr. Bradley made note that the hardships with which he faces are: he is unable to build in a flood zone, so this area is the only place for him to build the game court and to have the same privileges that similar properties in his neighborhood have been able to enjoy.

Mr. Halliday asked if the road fronting the property will be a private lane or will it be used for subdivision traffic. Mr. Bradley replied that it would be a public road going into the Oxford Creek subdivision.

Mr. Halliday asked if the lane on the similar property that Mr. Bradley used as examples is a private lane. Mr. Bradley could not answer that question. Ms. Haidenthaller commented that once the subdivision is built, it will then be a public road that will be used for those residents to get to their homes.

The discussion was then opened up to public comment.

Nick Mingo, 978 East Wood Oak Lane, stated he is representing Ivory Developments. Ivory Developments have sold Mr. Bradley the lot in question. They have had discussions about the game court and are okay with it. They have talked to him about the front setbacks and landscaping. Mr. Nay asked if there will be privacy fencing along the lane entering the subdivision. Mr. Mingo stated that Ivory Development will not be doing that and is the responsibility of the lot owner, Mr. Bradley to which he has stated that he plans on putting fencing up on the sides. Mr. Mingo noted that there is a unique shape to Mr. Bradley's yard and when you are looking at the property it doesn't feel like the area for the proposed game court is his front yard.

Jim Allred, 557 Walnut Brook Drive, stated he is a neighbor of the Bradley's. Mr. Allred stated that the property is unique in shape and size. The biggest impact that he sees will be for the future neighbors of the planned subdivision going in. Mr. Allred made note that Mr. Bradley's house is not setback from a street, but is setback from the back yard of another proposed street. Mr. Allred stated he is in favor of this proposal for the game court.

James Burdett, 2827 Beverly Street, stated that he works for Sport Court. He stated that he would be happy to answer any questions on the design or features of the court. Mr. Burdett pointed out that the fencing around the game court is for ball containment with a wind screen and is not a chain link fence. Any lighting will be 18 feet tall and made of metal halide (box light), which is directional and not a flood light. The fabric on the wind screen is black and easy to see through, the poles are 1 5/8 – 1 7/8 in. and are also black.

Ms. Haidenthaller asked if there was a flood situation, could the fencing be modified to allow debris to flow through that area. Mr. Burdett stated that it is somewhat of a temporary fencing and that the fencing goes on top of sleeves for ball containment. If anything the fencing would bend over for any debris that might be flowing through the area.

Mr. Bradley commented that the house, pool, barn and several of the neighbor's homes are in the flood plain and most of the structures are in the 500 year flood plain. He stated that any structures that are in the 100 year flood plain are the issue.

The public comment section was closed.

Mr. Olsen commented that this is a unique piece of property and he feels that because of that it is hard to define that the front yard is in fact where the proposed game court is to be built.

Ms. Haidenthaller stated that in any other development a front yard has a curb, gutter and public street access along the front. In this particular piece of property there is not a curb, gutter or public street access on any of its borders.

Mr. Halliday noted that because of property configuration and location of the home, the game court seems to be located more in a side yard. Mr. Olsen and Mr. Halliday stated that the aesthetics of the game court, fencing and landscaping will not violate the spirit of the ordinance.

Ms. Haidenthaller made a motion to approve a front yard setback variance contingent upon the approval of the lots 1 & 2 being combined and that the approval is for the construction of a game court and no other type of accessory structure. She stated that: A) The applicant has looked at placing the game court elsewhere on the property, but in doing so he would be in the 100 year flood plain, which is a hardship. Where the applicant has chosen to place the game court is now in the 500 year flood plain. B) The special circumstances have to do the uniqueness of the lots' size and shape. By combining both of these lots under one zoning district, this will make the lot a very unusual shape and size. C) Because of that, it will allow him to enjoy the front yard and build the game court in the front yard. D) By approving this variance they are not approving all game courts in front yards, just in the particular situation because of the unique lot, size and shape. In addition, there is no actual street frontage and may be considered a side yard. E) Since the board is considering the location of the game court to be more the side yard than the front yard, it does not affect the spirit of the land use.

Mr. Olsen seconded the motion as amended.

Mr. Wilkinson stated that by definition the area, to which the game court is to be built, is considered the front yard. This will need to be clarified in the board's findings of fact.

Vote recorded by Mr. Wilkinson.

A \_\_\_\_\_ Mr. Halliday

A \_\_\_\_\_ Mr. Olsen

A \_\_\_\_\_ Ms. Haidenthaller

A \_\_\_\_\_ Mr. Nay

Motion passed, 4-0.

Ms. Haidenthaller made a motion for staff to re-write the Findings of Fact based on the Board of Adjustment's new Findings and authorize the Chair to review and approve the findings.

Mr. Halliday seconded the motion.

A voice vote was made. Motion passed, 4-0.

#### OTHER BUSINESS

There was no other business to discuss.

Meeting adjourned.

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Chad Wilkinson, Manager  
Community & Economic Development